

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

UNITED STATES OF AMERICA,

Plaintiff,

CASE NO. 1:04-CR-109

v.

HON. ROBERT HOLMES BELL

CLAUDE BARNES,

Defendant.

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MEMORANDUM OPINION AND ORDER

This matter is before the Court on defendant's Motion for Modification or Reduction of Sentence Pursuant to 18 U.S.C. §3582(c)(2) (docket #93). Based on a review of defendant's motion, the Sentence Modification Report, submissions by counsel on behalf of the defendant and the government, and the original criminal file, the Court has determined that the motion should be denied as follows:

Defendant was originally sentenced on January 3, 2005 to a concurrent sentence of 168 months following his conviction on two counts of an Indictment charging Distribution of More Than 5 Grams of Cocaine Base (Count 1) and Distribution of More than 50 Grams of Cocaine Base (Count 2). Following a *Booker* remand, the defendant was re-sentenced on September 26, 2006, to a concurrent sentence of 120 months.

The Sentencing Guidelines provide that "where a statutorily required minimum sentence is greater than the maximum of the applicable guideline range, the statutorily required minimum sentence shall be the guideline sentence." USSG §5G1.1(b). Count 2 carries a mandatory minimum sentence of 10 years.

Since Amendment 750 does not result in a lower guideline range due to the mandatory minimum sentence imposed, defendant is not eligible for a sentence reduction under 18 U.S.C. §3582(c)(2) and USSG §1B1.10.(a)(2)(B)

ACCORDINGLY, defendant's motion (docket #93) is **DENIED**.

Date: June 11, 2012

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE